

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**AKOLOUTHEO, LLC,**

**Plaintiff,**

**v.**

**1) NETSCOUT SYSTEMS TEXAS, LLC; and  
2) NETSCOUT SYSTEMS, INC.,**

**Defendants.**

**CIVIL ACTION NO.: 4:18-cv-534**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action under the patent laws of the United States, Title 35 of the United States Code, for patent infringement in which Akoloutheo, LLC (“Akoloutheo” or “Plaintiff”), makes the following allegations against NetScout Systems Texas, LLC and NetScout Systems, Inc. (collectively, “NetScout” or “Defendants”).

**PARTIES**

2. Akoloutheo is a Texas limited liability company, having its primary office at 15139 Woodbluff Dr., Frisco, Texas 75035. Plaintiff’s owner and sole operator is Rochelle T. Burns.

3. Defendants are both Delaware companies having the same principal place of business at 310 Littleton Rd., Westford, MA 01886. NetScout also maintains two separate office buildings in the Eastern District of Texas – one of which is located at 915 Guardian Way, Allen, TX 75013, and the second of which is located at 3033 W. President George Bush Hwy., Plano, Texas 75075. Defendants have the same Registered Agent for service of process in Texas, which is CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

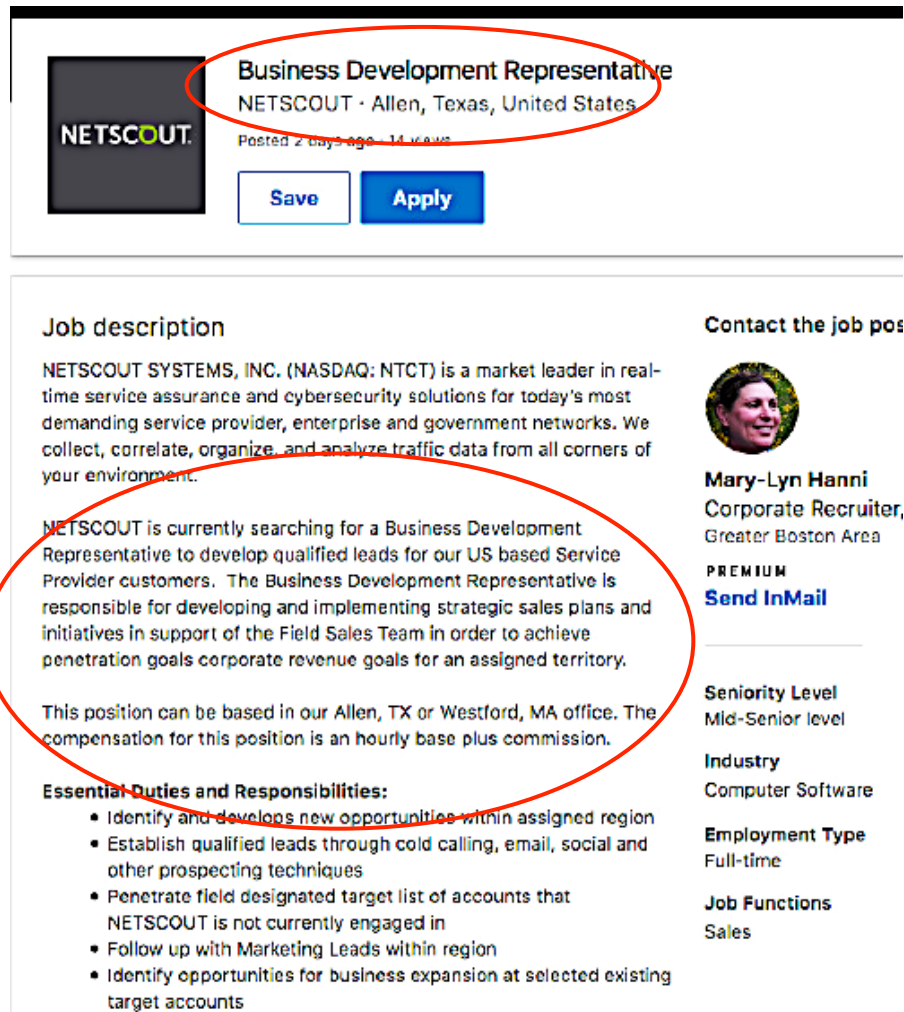
5. Venue is proper in this district under 28 U.S.C. §§ 1391(c), generally, and under 1400(b), specifically. Plaintiff's principal business location is within this district. Defendants have two (2) regular and established places of business in this Judicial District, and have committed acts of patent infringement in this Judicial District.

6. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

7. Defendants operate a first office complex at 915 Guardian Way in Allen, Texas – within the Eastern District of Texas.



8. Defendants have infringed by transacting and conducting business within the Eastern District of Texas. Operations at Defendants' Allen location include sales, marketing and/or business development of or for Defendants' infringing instrumentalities:



**NETSCOUT** **Business Development Representative**  
NETSCOUT · Allen, Texas, United States  
Posted 2 days ago · 14 views

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**Job description**

NETSCOUT SYSTEMS, INC. (NASDAQ: NTCT) is a market leader in real-time service assurance and cybersecurity solutions for today's most demanding service provider, enterprise and government networks. We collect, correlate, organize, and analyze traffic data from all corners of your environment.


NETSCOUT is currently searching for a Business Development Representative to develop qualified leads for our US based Service Provider customers. The Business Development Representative is responsible for developing and implementing strategic sales plans and initiatives in support of the Field Sales Team in order to achieve penetration goals corporate revenue goals for an assigned territory.

This position can be based in our Allen, TX or Westford, MA office. The compensation for this position is an hourly base plus commission.

**Essential Duties and Responsibilities:**

- Identify and develops new opportunities within assigned region
- Establish qualified leads through cold calling, email, social and other prospecting techniques
- Penetrate field designated target list of accounts that NETSCOUT is not currently engaged in
- Follow up with Marketing Leads within region
- Identify opportunities for business expansion at selected existing target accounts

**Contact the job poster**



**Mary-Lyn Hanni**  
Corporate Recruiter,  
Greater Boston Area

**PREMIUM**  
[Send InMail](#)

**Seniority Level**  
Mid-Senior level

**Industry**  
Computer Software

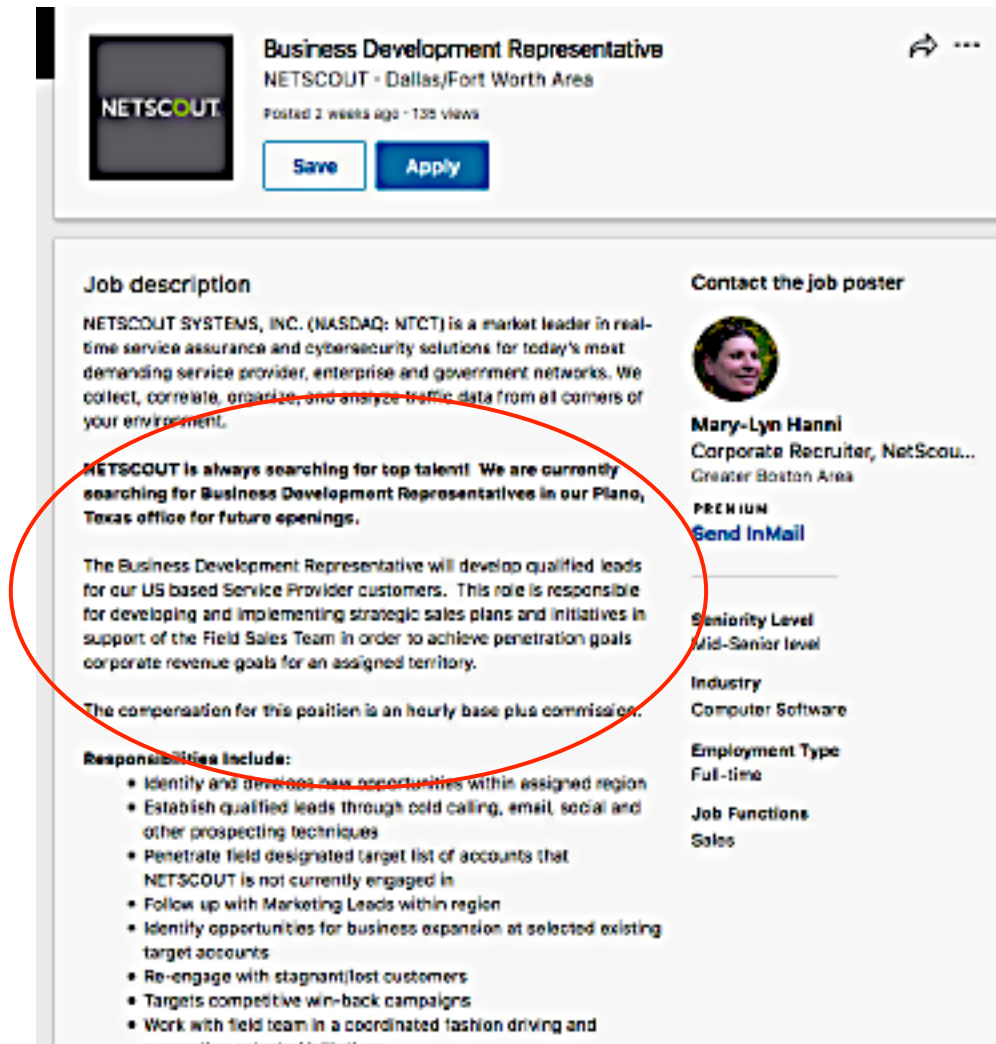
**Employment Type**  
Full-time

**Job Functions**  
Sales

9. Defendants operate a second office complex at 3033 W. President George Bush Hwy. in Plano, Texas – within the Eastern District of Texas:



10. Defendants have infringed by transacting and conducting business within the Eastern District of Texas. Operations at Defendants' Plano location include sales, marketing, business development, and/or technical support of or for Defendants' infringing instrumentalities.



**Business Development Representative**  
NETSCOUT - Dallas/Fort Worth Area  
Posted 2 weeks ago · 135 views

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**Job description**

NETSCOUT SYSTEMS, INC. (NASDAQ: NTCT) is a market leader in real-time service assurance and cybersecurity solutions for today's most demanding service provider, enterprise and government networks. We collect, correlate, organize, and analyze traffic data from all corners of your environment.

**NETSCOUT is always searching for top talent! We are currently searching for Business Development Representatives in our Plano, Texas office for future openings.**


The Business Development Representative will develop qualified leads for our US based Service Provider customers. This role is responsible for developing and implementing strategic sales plans and initiatives in support of the Field Sales Team in order to achieve penetration goals corporate revenue goals for an assigned territory.

The compensation for this position is an hourly base plus commission.

**Responsibilities include:**

- Identify and develop new opportunities within assigned region
- Establish qualified leads through cold calling, email, social and other prospecting techniques
- Penetrate field designated target list of accounts that NETSCOUT is not currently engaged in
- Follow up with Marketing Leads within region
- Identify opportunities for business expansion at selected existing target accounts
- Re-engage with stagnant/lost customers
- Targets competitive win-back campaigns
- Work with field team in a coordinated fashion driving and supporting selected initiatives

**Contact the job poster**

  
**Mary-Lyn Hanni**  
Corporate Recruiter, NetScou...  
Greater Boston Area

**PREMIUM**  
[Send InMail](#)

**Seniority Level**  
Mid-Senior level

**Industry**  
Computer Software

**Employment Type**  
Full-time

**Job Functions**  
Sales



**Remote Support Engineer**  
NETSCOUT - Plano, Texas  
New · Posted 1 hour ago · 1,575 views

[Save](#) [Easy Apply](#)

**Job description**

NetScout is continuing to grow & our Support Services is expanding! Do you have strong technical skills in network management? Do you enjoy working in a fast-paced environment while troubleshooting & resolving customer issues? Consider a new opportunity at NetScout! At NetScout Systems, we have an appreciation for knowledge. If you're eager to apply your talent and drive, you will quickly discover that you can make a difference. We're looking for highly skilled individuals with the ambition it takes to achieve quality results. We are currently seeking an On-site Engineer to work in this fast-paced environment with world-class engineers and customers, and cutting-edge technology on a daily basis to ensure the customer always has access to the critical data that our products provide. This position will work at our Customer location.


**Essential Responsibilities**

- Work with customers to troubleshoot and resolve complex product issues
- Interface with our world-class support, development and SQA teams to identify and to resolve product issues
- Utilizing NetScout's Knowledge Management database, research & develop technical tips and solutions
- Advise customer on network management best practices using NetScout product suite

**Required Skills**

- Bachelor's Degree in Computer Science/Network Security or equivalent discipline
- Minimum of 5 years in network management supporting external customers
- 2 plus years in critical and managed customer care
- Proven expertise in customer relationship and management
- Network Management experience is preferred
- Experience working remotely, but cooperatively with HQ
- Demonstrated ability to identify and resolve complex network problems

**Contact the job poster**

  
**Tanya Amaya-Sanchez**  
Talent Acquisition Specialist a...  
Dallas/Fort Worth Area  
**PREMIUM**  
[Send InMail](#)

**Seniority Level**  
Mid-Senior level

**Industry**  
Computer Networking,  
Computer & Network Security,  
Telecommunications

**Employment Type**  
Full-time

**Job Functions**  
Information Technology,  
Engineering

11. Defendants' offices in Allen, Texas and Plano, Texas are regular and established places of business in this Judicial District, and Defendants have committed acts of infringement (as detailed hereinafter) at those offices within this District. Venue is therefore proper in this District under 28 U.S.C. § 1400(b).

### **COUNT I** **INFRINGEMENT OF U.S. PATENT NO. 7,426,730**

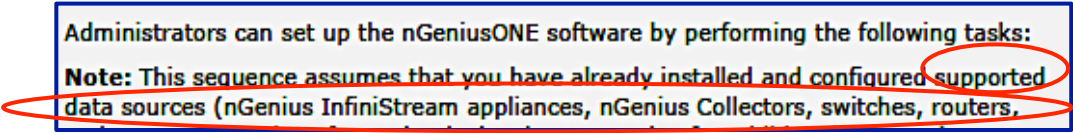
12. Plaintiff is the owner by assignment of the valid and enforceable United States Patent No. 7,426,730 ("the '730 Patent") entitled "Method and System for Generalized and Adaptive Transaction Processing Between Uniform Information Services and Applications" – including all rights to recover for past, present and future acts of infringement. The '730 Patent

issued on September 16, 2008, and has a priority date of April 19, 2001. A true and correct copy of the '730 Patent is attached as Exhibit A.

13. Defendant directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – made, had made, used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to software systems, cloud-based software, and/or software as a service (SaaS) for network management and interrogation including, but not limited to, NetScout's: nGeniusONE, nGeniusPULSE, nGenius Business Analytics, TruView, vSTREAM virtual appliance, vSCOUT and vSTREAM software systems ("NetScout Software").

14. Defendant directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – made, had made, used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to network resource components – devices and systems for network monitoring, interrogation, and management – including, but not limited to, NetScout's: nGenius Packet Flow switches, nGeniusONE platform servers, nGenius Collectors, nGenius Routers, vSTREAM virtual appliances, and nGenius InfiniStream appliances ("NetScout Network Resources").

15. Documentation for NetScout Software indicates that the software supports specific NetScout Network Resources:



Administrators can set up the nGeniusONE software by performing the following tasks:  
**Note:** This sequence assumes that you have already installed and configured supported data sources (nGenius InfiniStream appliances, nGenius Collectors, switches, routers,

16. Together, NetScout Software and NetScout Network Resources form a unified system, having operations and requirements that are exclusive to NetScout, which requires the use of NetScout Network Resources in conjunction with NetScout Software ("NetScout System").

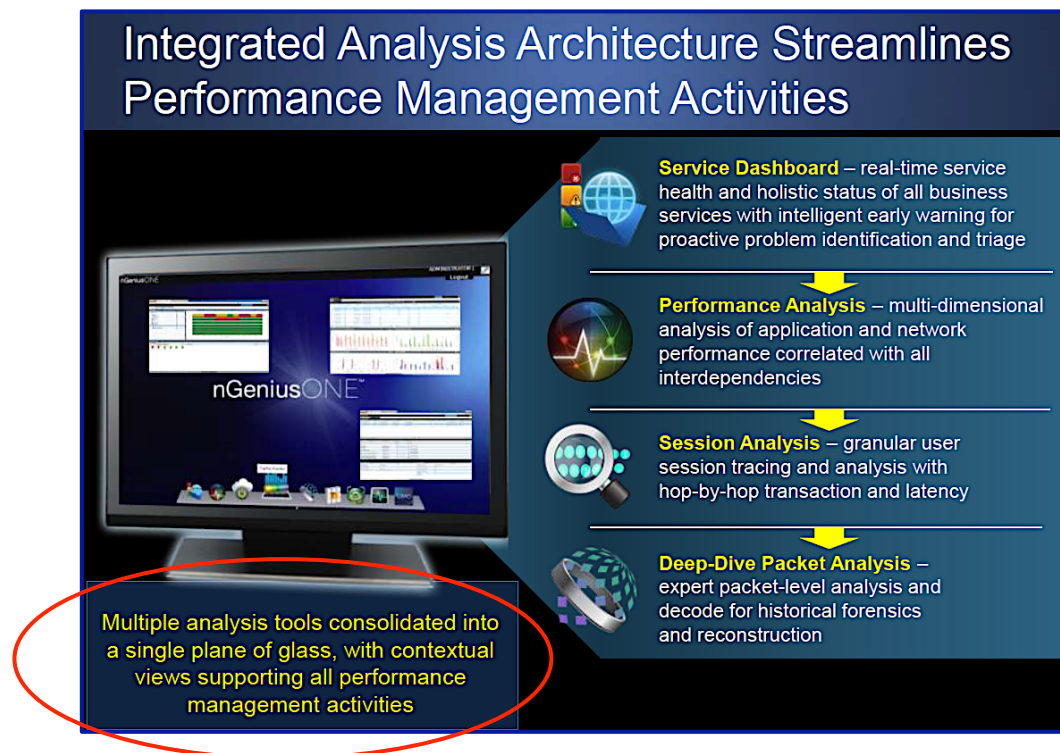
17. NetScout Software performs centralized monitoring, interrogation and configuration functions for NetScout Network Resources across a network, to which the NetScout Software is operationally and communicatively linked:

The nGeniusONE server provides centralized management functionality to control and monitor nGenius InfiniStream appliances and manage configuration parameters within the nGeniusONE platform.

The nGeniusONE appliance provides statistics display, data mining, and reporting of network traffic captured by one or more managed InfiniStream appliances. The nGeniusONE appliance provides the mechanism to access one or more network traffic flows for analysis. It provides for the retrieval, analysis, and decode of captured traffic and allows the captured network traffic to be viewed graphically and statistically; it also identifies and diagnoses network problems. The nGeniusONE appliance includes a framework that enables intelligence modules to be added to the product to provide application protocol- or industry-specific traffic analysis.

The nGeniusONE appliance provides the ability to generate reports from analysis of the captured data.

nGeniusONE platform provides advanced analysis capabilities for specialized data from pervasive nGenius Intelligent Data Sources. This system correlates components of a “service” into a unified view with a top level view that reveals service status.




18. NetScout Software generates a user interface – which may be console or web browser based – through which authorized users login to monitor/manipulate various NetScout Network Resources:

- When web interface users enter passwords into the UI, feedback consists of dot characters.
- When local or remote console users log into the console, the system does not return any password feedback.

**6.4.1 Remote user Web Access**

Browser users access the nGeniusONE web user interface directly over HTTPS (TLS) and interact with nGeniusONE using HTML5 or interact with the legacy Unified Management Console over HTML. Users enter identification and authentication data (their user name and password) directly into the nGeniusONE web user identification and authentication interface.

19. NetScout Software generates and/or maintains a listing of all devices and resources on the network; and organizes and displays this listing in list view:

The **Devices** tab in  **Device Configuration** displays a list of devices that have been added to the nGeniusONE server along with their associated characteristics.

20. NetScout Software thus generates a registry of NetScout Network Resources and information about each of the NetScout Network Resources.

21. NetScout Software, through a user interface, accepts a transaction requested by a user – such as a request or command applicable to one or more NetScout Network Resource(s).

You create and save reports by using the Report Configuration wizard and leveraging predefined templates. Each template contains a set of views designed for a specific purpose and audience. These views can optionally be customized with specified metrics and display preferences. You then select the sources that will provide data for each report, which can include services, service domains, monitored elements (links), network domains (groups of monitored elements), applications, and application groups.

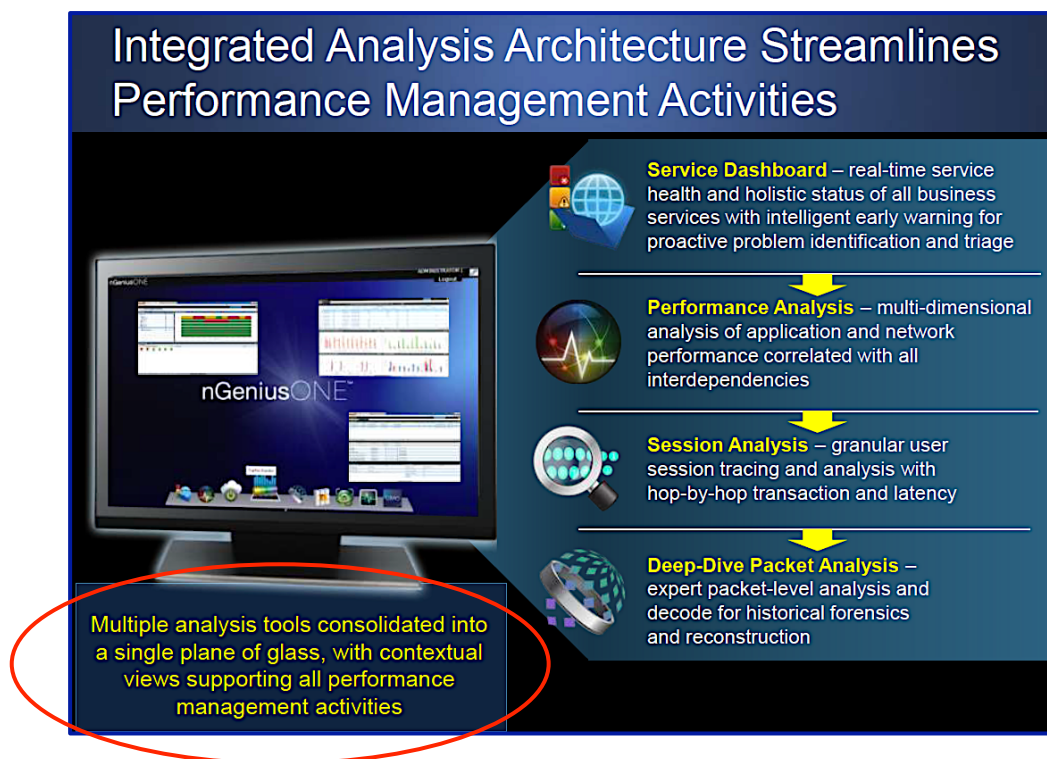
22. NetScout Software determines which NetScout Network Resources may be responsive to the requested transaction, and dynamically generates a corresponding communication or signal to one or more NetScout Network Resources responsive to that requested transaction.

The nGeniusONE appliance provides statistics display, data mining, and reporting of network traffic captured by one or more managed InfiniStream appliances. The nGeniusONE appliance provides the mechanism to access one or more network traffic flows for analysis. It provides for the retrieval, analysis, and decode of captured traffic and allows the captured network traffic to be viewed graphically and statistically; it also identifies and diagnoses network problems. The nGeniusONE appliance includes a framework that enables intelligence modules to be added to the product to provide application protocol- or industry-specific traffic analysis.

The nGeniusONE appliance provides the ability to generate reports from analysis of the captured data.

nGeniusONE platform provides advanced analysis capabilities for specialized data from pervasive nGenius Intelligent Data Sources. This system correlates components of a “service” into a unified view with a top level view that reveals service status.



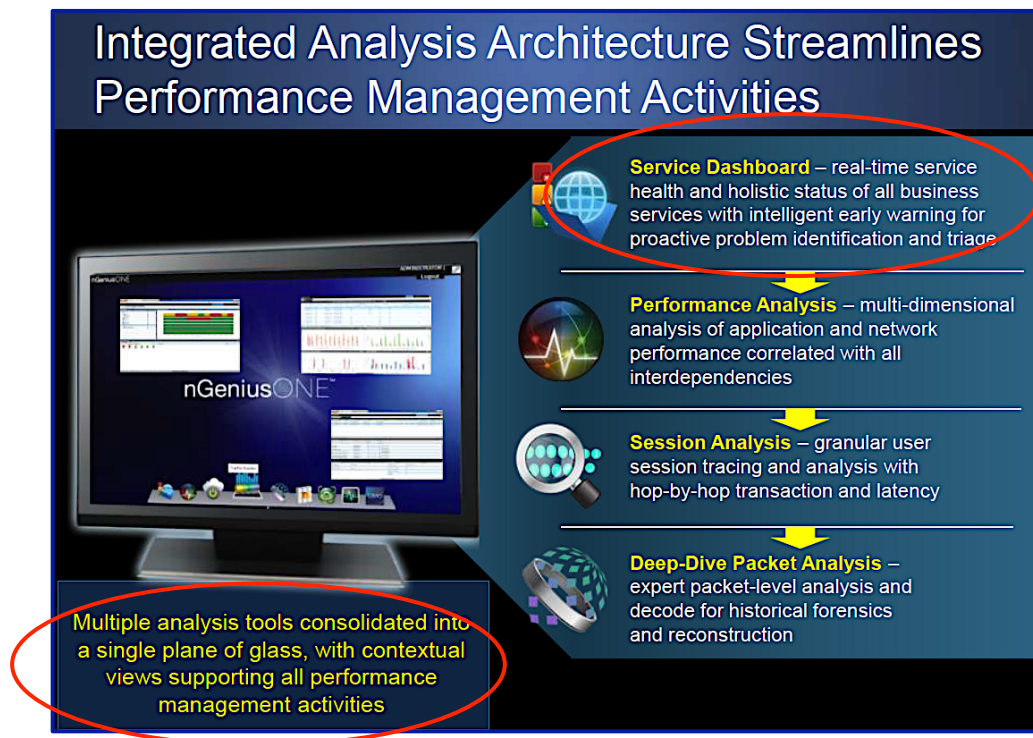


NetScout Software selects which NetScout Network Resources are responsive to the requested transaction, and performs the transaction on or with that NetScout Network Resource. NetScout Software, through its user interface, accepts user requests or requirements for network data, generates corresponding communications or signals with one or more related NetScout Network Resources, and retrieves requested network data from the NetScout Network Resources – displaying the requested data for a user via the user interface.

The Search & Discover tool, located prominently at the header level in all nGeniusONE modules, globally queries a host of objects with the ability to discover all possible associations for searched context. For example, if a client address is searched, Search & Discover also looks for the nGeniusONE server, which applications are talking to this client, which location is seeing this client – by querying all ASI tables – and based on all discovered objects, displays these associations along with a total count (first row data only). Search data are ranked by either total transactions or throughput.

23. NetScout Software processes a variety of context specific data as it processes the user request.

24. NetScout Software creates connections to multiple NetScout Network Resources, displays all NetScout Network Resources, and controls all NetScout Network Resources from a single user interface.



25. NetScout Software manages enterprise-scale monitoring infrastructure remotely from a single user interface.

26. NetScout Software is installed on a server networked with a number of NetScout Network Resources – generating its user interface on a user terminal operably associated with that networked server, and performing the functions and operations described in paragraphs 15 – 25, above.

27. Plaintiff herein restates and incorporates by reference paragraphs 13-26, above.

28. All recited elements of – at least – claims 1, 15, and 17 of the ‘730 Patent are present on or within NetScout Systems.

29. As generally described in the paragraphs above, a NetScout System comprises NetScout Software installed on a networked computer system having a plurality of computer servers, and a plurality of NetScout Network Resources communicatively and operationally coupled to the NetScout Software.

30. As generally described in the paragraphs above, NetScout Software provides information, monitoring or control of one or more NetScout Network Resources according to a transaction request entered into the NetScout System through the NetScout Software user interface.

31. As generally described in the paragraphs above, NetScout Software processes resource transactions entered through the NetScout Software user interface.

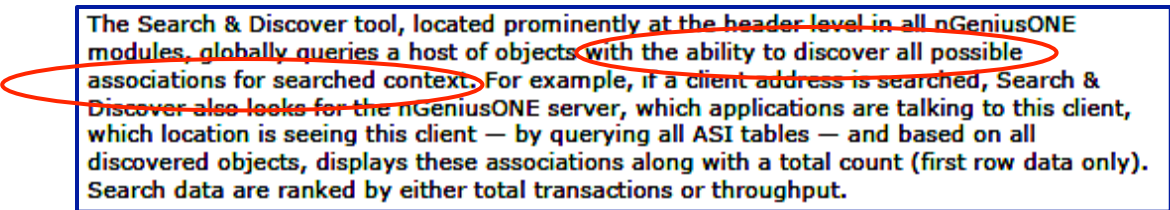
32. As generally described in the paragraphs above, a NetScout System comprises a plurality of NetScout Network Resources, remotely located with respect to the computer system upon which the NetScout Software, and communicatively coupled to the NetScout Software via a computer network.

33. As generally described in the paragraphs above, each NetScout Network Resource provides one or more resources (*e.g.*, data elements or categories) available for use by the NetScout Software.

34. A NetScout System comprises a resource information registry for storing information about the NetScout Network Resources. The information registry in a NetScout System stores resource information available for each of the NetScout Network Resources.

35. NetScout Software, through its user interface, accepts user requests or commands that define a requested transaction with a NetScout Network Resource; and dynamically generates a corresponding communication or signal to one or more NetScout Network Resources responsive to that requested transaction.

36. NetScout Software generates contextual elements for the requested transaction that provide additional information for dynamically selecting and processing data from at least one NetScout Network Resource:



The Search & Discover tool, located prominently at the header level in all nGeniusONE modules, globally queries a host of objects with the ability to discover all possible associations for searched context. For example, if a client address is searched, Search & Discover also looks for the nGeniusONE server, which applications are talking to this client, which location is seeing this client — by querying all ASI tables — and based on all discovered objects, displays these associations along with a total count (first row data only). Search data are ranked by either total transactions or throughput.

37. NetScout Software dynamically selects at least one NetScout Network Resource to process in conjunction with the requested transaction according to information stored in the resource information registry.

38. NetScout Software determines one or more operations to perform on the NetScout Network Resource to obtain a result satisfying the requested transaction – such as retrieving status or operational statistics.

39. NetScout Software obtains the result from the selected NetScout Network Resource and processes that result to generate a desired output to the NetScout Software user interface.

40. NetScout Systems infringe – at least – claims 1, 15, and 17 of the ‘730 Patent.

41. NetScout Systems literally and directly infringe – at least – claims 1, 15, and 17 of the ‘730 Patent.

42. NetScout Systems perform or comprise all required elements of – at least – claims 1, 15, and 17 of the ‘730 Patent.

43. In the alternative, NetScout Systems infringe – at least – claims 1, 15, and 17 of the ‘730 Patent under the doctrine of equivalents. NetScout Systems perform substantially the same functions in substantially the same manner with substantially the same structures, obtaining substantially the same results, as the required elements of – at least – claims 1, 15, and 17 of the ‘730 Patent. Any differences between the NetScout Systems and the claims of the ‘730 Patent are insubstantial.

44. NetScout Systems – by virtue of exclusivity of use between NetScout Software and NetScout Network Resources – require end users to operate the NetScout Systems in a manner prescribed and controlled by NetScout. NetScout therefore exercises control and/or direction over the performance of every action performed on or by a NetScout System, including those that are initiated by an end user via the NetScout System user interface.

45. All recited elements of – at least – claims 1, 15, and 17 of the ‘730 Patent are present within, or performed by, NetScout Systems or, in the alternative, performed by end users of NetScout Systems under the direction and control of NetScout – and are therefore attributable to NetScout.

46. NetScout Systems, when used and/or operated in their intended manner or as designed, infringe – at least – claims 1, 15, and 17 of the ‘730 Patent, and NetScout is therefore liable for infringement of the ‘730 Patent.



**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter:

- a. A judgment in favor of Plaintiff that Defendants have infringed the '730 Patent;
- b. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith, from infringement of the '730 Patent;
- c. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '730 Patent as provided under 35 U.S.C. § 284;
- d. An award to Plaintiff for enhanced damages resulting from the knowing and deliberate nature of Defendants' prohibited conduct with notice being made at least as early as the service date of this complaint, as provided under 35 U.S.C. § 284;
- e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and
- f. Any and all other relief to which Plaintiff may show itself to be entitled.

July 31, 2018

Respectfully Submitted,

By: /s/ Ronald W. Burns

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AKOLOURTHEO, LLC**